

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6186

BILL NUMBER: SB 92

NOTE PREPARED: Feb 2, 2015

BILL AMENDED: Jan 29, 2015

SUBJECT: Deadly Weapons.

FIRST AUTHOR: Sen. Schneider

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: X **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Use of a Deadly Weapon as a Sentence Enhancement*– It specifies offenses that are eligible for a sentencing enhancement if a deadly weapon is used during the commission of certain offenses.
- B. *Drug Dealing* – It provides that a sentence may be enhanced when a deadly weapon is used during the commission of controlled substance offenses.
- C. *Nonsuspendible Enhancement* – It that sentencing enhancements for the possession of a deadly weapon during the commission of an offense may not be suspended.
- D. *Habitual Felon Enhancement* – It provides that a person is a habitual offender if the state proves the person has been convicted of three prior unrelated felonies of any level.

Effective Date: July 1, 2015.

Explanation of State Expenditures: (Revised) *Use of a Deadly Weapon as a Sentence Enhancement* – Under current law, a person who uses a firearm that results in death or serious bodily injury, kidnaping, or criminal confinement as a Level 2 or 3 felony could be sentenced to an additional 5 to 20 years in prison that could be suspended (or placed on probation). The prosecuting attorney has the discretion to request the additional sentencing. Either the judge or the jury must find that the prosecuting attorney proved beyond a reasonable doubt that the person knowingly or intentionally used a firearm.

As proposed, a prosecuting attorney would have the discretion to request an additional sentence that could

not be suspended if a deadly weapon was used in any crime against a person (IC 35-42), in arson for hire (IC 35-43-1-1(b)), resisting law enforcement as a felony (IC 35-44.1-3-1), escape (IC 35-44.1-3-3), or rioting (IC 35-45-1-2).

A deadly weapon includes not only firearms, but also the following:

- A destructive device, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1).
- Equipment, chemical substance, or other material that is readily capable of causing serious bodily injury.
- An animal that is readily capable of causing serious bodily injury; and used in the commission or attempted commission of a crime.
- A biological disease, virus, or organism that is capable of causing serious bodily injury.

LSA examined the Department of Correction's (DOC) commitment data between 2008 and 2012 for offenders committed for a new violent crime in which use of a firearm, handgun, bomb, or destructive device was listed as one of the additional crimes.

Since no separate felony for using a deadly weapon in the course of a violent crime exists in statute, LSA includes felony firearm possession (IC 35-47-4-5) and possessing or carrying a handgun without a license (IC 35-47-2-1), besides pointing a firearm (IC 35-47-4-3) in the course of the crime to illustrate the potential number of offenders who might be given this enhanced sentence.

The following table summarizes the number of offenders who were convicted and sentenced for both a felony listed above (qualifying felony) and a firearm offense under IC 35-47. DOC indicates that this will be an underestimate because there are Level 4, Level 5, and Level 6 felonies under IC 35-42 that can be entirely suspended. (IC 35-50-2-2.2) Consequently, there are offenders who might have been placed entirely on probation but will now serve this nonsuspendible sentence enhancement in a DOC facility.

Commitments to DOC for Crimes Against a Person, Burglary, Criminal Recklessness, Resisting Law Enforcement and Escape Where a Firearm or Handgun Was An Added Crime by Calendar Year					
Qualifying Felony	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012
Battery-Related	19	16	18	10	15
Burglary	8	9	5	9	7
Criminal Recklessness	5	14	11	7	6
Criminal Confinement / Kidnapping	7	7	7	1	1
Resisting Law Enforcement / Escape	14	16	10	11	11
Robbery	49	39	43	21	21
Sex Crime	4	1	3		2
Homicide / Murder	5	5	10	4	3
Grand Total	111	107	107	63	66

Note: This table will be updated when information on CY 2013 and 2014 are available.

(Revised) *Use of a Deadly Weapon in the Course of Drug Dealing* – Under current law, the state (a prosecuting attorney) may file for an additional sentence of not more than 5 years if the state proves that the person knowingly and intentionally possessed certain firearms while dealing in cocaine, narcotic drugs, methamphetamine, and drugs in Schedules I through IV.

This bill expands the types of weapons to include deadly weapons and increases the additional sentence that can be requested from the current 5 years to a range between 5 and 20 years. The court would not be permitted to suspend this sentence.

Since no separate felony for using a deadly weapon in the course of a violent crime exists in statute, LSA includes felony firearm possession (IC 35-47-4-5), possession of or carrying a handgun without a license (IC 35-47-2-1), besides pointing a firearm (IC 35-47-4-3) in the course of the crime to illustrate the potential number of offenders who might be given this enhanced sentence. The following table shows the number of offenders who were committed to DOC for CY 2008 through 2012 for a drug dealing crime (qualifying felony) and for an added firearm felony. DOC indicates that this will be an underestimate because felonies under IC 35-48 can be entirely suspended. (IC 35-50-2-2.2) Consequently, there are offenders who might have been placed entirely on probation but will not serve this nonsuspendible sentence enhancement in a DOC facility.

Commitments to DOC for Drug Dealing Crimes And Where a a Firearm or Handgun or Destructive Device Was An Added Crime					
Qualifying Felony	CY 2008	CY 2009	CY 2010	CY 2011	CY 2012
Dealing Cocaine	11	17	11	11	14
Dealing Meth		3	4	5	2
Dealing Schedule Drug	1	1	1	2	2
Grand Total	12	21	16	18	18

This table will be updated when information on CY 2013 and 2014 are available.

Nonsuspendible Habitual Felon Sentencing – Under current law, persons who have a current conviction for murder or Level 1 through Level 4 felonies are not eligible for a habitual offender enhancement if:

- They have had three prior unrelated convictions for Level 5, Level 6, Class D, or Class C felonies.
- These felonies were committed within the past 10 years.

This provision would make these offenders eligible for a nonsuspendible habitual offender enhancement of between 6 and 20 years in prison.

The average expenditure to house an adult offender was \$19,497 in FY 2014. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$3,210 annually, or \$8.77 daily, per prisoner.

Explanation of State Revenues:

Explanation of Local Expenditures: This bill could also increase jury costs if a jury must reconvene to hear evidence in the enhancement hearing.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction.

Local Agencies Affected: Prosecuting attorneys, trial courts.

Information Sources: Department of Correction offender information system; Sarah Schelle, Division of Research and Technology, Department of Correction.

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